In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1143

RAY MARSHALL, SECRETARY OF LABOR, et al.,
Appellants,

vs.

BARLOW'S, INC.,
Appellee.

On Appeal from the United States District Court for the District of Idaho

Brief *Amicus Curiae* of Sierra Club; Oil, Chemical and Atomic Workers International Union; and Friends of the Earth in Support of Appellants

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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INTRODUCTION

This *amicus curiae* brief is filed on behalf of the Sierra Club, the Oil, Chemical and Atomic Workers International Union, and Friends of the Earth in support of the Government's position on appeal. Pursuant to Supreme Court Rule 42(2), consent to the filing of this brief has been given by the parties herein. The exchange of correspondence documenting such consent is on file with the Clerk of the Court.

INTEREST OF THE AMICI

Amicus Sierra Club, a non-profit corporation, is an international environmental and conservation organization with approximately 175,000 members in the United States. A stated corporate purpose of Sierra Club is "To enhance and protect by all lawful means the natural resources and human environment of the United States and the earth in general." This includes not only the natural environment, but also the environment of the modern industrial workplace. Sierra Club actively supported enactment of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (OSHA), including the inspection provisions at issue herein, and has called for stronger enforcement of that Act. By resolutions of its Board of Directors, Sierra Club has supported the Oil, Chemical and Atomic Workers International Union, and other workers in their efforts to obtain working conditions which are environmentally safe.

The decision of the three-judge district court below, if allowed to stand, will place a serious obstacle in the way of the Occupational Safety and Health Administration in attempting to safeguard the environment of working Americans. Moreover, the sweeping generality of the court's decision threatens the ability of federal and state regulatory agencies throughout the country to control air and water pollution. Only months ago, for example, with the active support of the Sierra Club, the Congress enacted the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.* (1976), a central provision of which is its authorization of warrantless inspections similar to those invalidated by the district court herein. See 15 U.S.C. § 2610. Similar administrative inspection provisions appear in many other major federal environmental protection statutes the passage of which the Sierra Club strongly favored, and the enforcement of which the Sierra Club is closely monitoring. The Government's ability to implement these laws designed to protect the public health as intended by Congress will also be severely curtailed if the district court's decision is upheld. For these reasons the Sierra Club urges this Court to uphold the inspection provisions in question here.

Amicus Oil, Chemical and Atomic Workers International Union (OCAW) is an international trade union of approximately 200,000 members, many of whom work in the most hazardous working environment imaginable. Due to the prior lack of stringent regulatory monitoring of conditions in the workplace, OCAW's members have for decades been subjected to hazards which are often unrecognizable except through the advent of disease after years of latency. For these reasons OCAW supported the enactment of the Occupational Safety and Health Act of 1970 and has consistently opposed any erosion of its enforcement provisions. In testifying before the Senate when enactment of OSHA was under consideration, OCAW took the position that any bill must include "a task force of inspectors . . . to systematically tour plants and factories in the company of workers and management representatives, and without warning."[1] OCAW concurs with the statement of John Stender, former assistant Secretary of Labor, that

> "The inspection program alone cannot create a safe and healthful work environment. The efforts of both employers and employees are necessary. But inspections are a vital ingredient in bringing about such cooperation. Prior to OSHA, insufficient progress was made by attempts at encouraging job safety and health solely on a voluntary basis or without adequate en-

1. Statement of Anthony Mazzocchi, hearings before the Senate Committee on Labor and Public Welfare, "Occupational Safety and Health Act of 1970," (1970) Part 2 at 1032.

> forcement tools. . . . Without the possibility of first instance sanctions and unannounced inspections, the Act would provide little incentive for voluntary compliance."[2]

OCAW members are frequently unaware of violations of health standards in the plant, health standards which are essential to protect them from cancer and debilitating respiratory diseases. Without OSHA's inspection procedures OCAW members would have little to protect them, and non-member chemical workers would have less, in the extremely hazardous environment in which they work. For these reasons the Oil, Chemical, and Atomic Workers have a vital interest in this case.

Amicus Friends of the Earth, a nonprofit corporation, is a national membership conservation group with various branches throughout the United States. It has a membership of approximately 19,000 individuals. The primary purpose of Friends of the Earth is the promotion of sound environmental and conservation principles, including the protection of human health through proper environmental management. In support of a safe working environment, Friends of the Earth has worked for enactment of the Occupational Safety and Health Act and the Toxic Substances Control Act. Friends of the Earth has been particularly concerned with hazardous materials in the workplace and recently co-sponsored with the U. S. Environmental Protection Agency, OCAW and others, a conference titled "Labor Looks at an Environmental Question: Hazardous Wastes." Friends of the Earth is a member of the Urban

2. Statement of Assistant Secretary of Labor, John H. Stender, hearings before the Senate Committee on Labor and Public Welfare, "Occupational Safety and Health Act Review," (1974), at 223.

Environmental Conference, a coalition of approximately 60 labor, environmental, and civil rights groups which supports enactment and strict enforcement of legislation to enhance occupational health.

SUMMARY OF ARGUMENT

The Fourth Amendment does not necessarily require that administrative regulatory inspections, or "searches," be conducted pursuant to a warrant; such inspections are prohibited only if they are "unreasonable." Routine warrantless inspections as contemplated by Sec. 8(a) of the Occupational Safety and Health Act of 1970 are reasonable under the rationale of *United States v. Biswell,* 406 U.S. 311 (1972) because they are essential to the purposes of the Act and further an urgent federal interest on the one hand and because they pose a minimal threat to legitimate privacy expectations on the other. Additionally, a holding by this Court that Sec. 8(a) is unconstitutional could have a devastating effect upon the multitude of recent public health and environmental protection statutes in which Congress has recognized a need for similar warrantless regulatory inspection schemes.

ARGUMENT

I. Warrantless Administrative Inspections as Contemplated by Sec. 8(a), on the One Hand, Are Essential to the Purposes of OSHA and Further an Urgent Federal Interest, and on the Other Hand, Constitute Minimal Invasion of Privacy; They Are Therefore Valid Under the Rationale of United States v. Biswell, 406 U.S. 311 (1972)

The Fourth Amendment to the United States Constitution[3] does not on its face prohibit warrantless searches, but

3. The Fourth Amendment provides:
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

only "unreasonable" searches. See, most recently, *United States v. Chadwick*, ... U.S. ....., ..., 45 U.S.L.W. 4797, 4799 (June 21, 1977). This Court has, however, frequently interpreted the constitutional language so as to render warrantless searches presumptively unreasonable, and therefore unconstitutional, in all but "certain carefully defined classes of cases." *Camara v. Municipal Court*, 387 U.S. 523, 528-9 (1967); *G.M. Leasing Corp. v. United States*, ... U.S. ....., ..., 97 S.Ct. 619, 628-9, 631 (1977). Those classes of cases which constitute exceptions to the general rule that warrantless searches are "unreasonable" include, for example, border searches, *United States v. Ramsey*, ... U.S. ....., ..., 45 U.S.L.W. 4577, 4579-80 (June 6, 1977); automobile searches, *Chambers v. Maroney*, 399 U.S. 42, 46-52 (1970); searches made incident to a valid arrest, *Chimel v. California*, 395 U.S. 752, 762-3 (1969); and searches where the object of the search is in "plain view" and/or the search is made in the "open fields," *Air Pollution Variance Board of Colorado v. Western Alfalfa Corp.*, 416 U.S. 861, 864-5 (1974).

Amici submit that this case falls within another such "class of cases," to wit, administrative regulatory inspections of commercial and industrial structures intended to ensure compliance with statutes designed to protect the public health, where a warrant requirement would frustrate the purposes of the statute. In this class of cases, the Court has adopted a case by case balancing approach to determine whether the Fourth Amendment mandates a warrant,

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seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

balancing the urgency of the federal interest sought to be furthered by the warrantless inspection provision and the degree to which this interest would be frustrated by a warrant requirement, on the one hand, and the potential for abuse and the threat to legitimate privacy expectations posed by the provision on the other. *United States v. Biswell*, 406 U.S. 311, 316-317 (1972). See also *Camara v. Municipal Court*, 387 U.S. 523, 533 (1967); *See v. City of Seattle*, 387 U.S. 541, 546 (1967); *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 77 (1970).

In the companion cases of *Camara* and *See, supra*, the first to deal squarely with this issue, the Court found that the balance tilted towards requiring a warrant for routine administrative inspections by city officials for possible violations of municipal housing and fire codes. This was because, as the Court stated,

> "It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement." *Camara, supra*, at 387 U.S. 533.

In the more recent decision of *United States v. Biswell*, 406 U.S. 311 (1972), on the other hand, the Court with but one dissent, and by the same author as in *Camara* and *See* (Mr. Justice White) upheld as reasonable within the meaning of the Fourth Amendment the warrantless inspection of business premises pursuant to the Federal Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.* The Court elaborated upon its prior conclusion that the regulatory schemes in *Camara* and *See* could be reasonably enforced within the context of a warrant requirement:

> "In *See v. City of Seattle*, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967), the mission of the inspection system was to discover and correct violations of the

> building code, conditions that were relatively difficult to conceal or to correct in a short time. Periodic inspection sufficed, and inspection warrants could be required and privacy given a measure of protection with little if any threat to the effectiveness of the inspection system there at issue."

United States v. Biswell, supra, at 406 U.S. 316.

With respect to the Gun Control Act, however, the Court found that

> "It is . . . apparent that if the law is to be properly enforced and inspection made effective, inspections without warrant must be deemed reasonable official conduct under the Fourth Amendment." *Ibid.*

In reaching this result, the Court paid great deference to the "Congressional Findings and Declaration, Note preceding 18 U.S.C. § 922," which indicated that

> "close scrutiny of this [gun] traffic is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders. . . . Large interests are at stake, and inspection is a crucial part of the regulatory scheme . . ." *Id.* at 406 U.S. 315.

The Court emphasized that

> "Here, if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible.",

406 U.S. 315, and concluded:

> "We have little difficulty in concluding that where, as here, regulatory inspections further urgent federal interest, and the possibilities of abuse and the threat

> to privacy are not of impressive dimensions, the inspection may proceed without a warrant where specifically authorized by statute."

Id. at 406 U.S. 317.[4] See also *Colonnade Catering Corp. v. United States,* 397 U.S. 72 (1970).

With respect to Sec. 8(a) of OSHA, 29 U.S.C. § 657(a),[5] each of the pertinent factors identified in *Biswell* is present: an "urgent federal interest" that would be frustrated by a warrant requirement and the need for "unannounced, even frequent, inspections" to ensure compliance with the statutory goals on the one hand, and minimal possibilities of abuse and threat to the businessman's privacy[6] on the other.

As in the case of the Gun Control Act, Congress has expressly set forth the urgent federal interest in maintain-

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4. In light of this Court's recognition, with which ***Amici*** heartily agree, that the rights protected by the Fourth Amendment "are to be regarded as of the very essence of constitutional liberty," *Harris v. United States,* 331 U.S. 145, 150 (1947), *Biswell* may do no more than state the well-known rule that a compelling governmental interest may justify infringement of the warrant requirement when there are no "less drastic means for achieving the same basic purpose." *Shelton v. Tucker,* 364 U.S. 479, 488 (1960). As discussed in the text, the circumstances that led Congress to enact Sec. 8(a) of the Occupational Safety and Health Act justify the Court in upholding Sec. 8(a) under that standard as well.

5. Section 8(a) is set out in full in Appendix I.

6. Section 8(a) does not give the compliance officer unlimited authority to search the private recesses of a businessman's office. Rather, the scope of the permissible search is limited to "any factory, plant, establishment, construction site, or other area, work place or environment *where work is performed by an employee of an employer*" (emphasis supplied). Nor does Sec. 8(a) give the federal agent authority to search out violations of laws other than federal safety and health regulations. See *Brennan v. Buckeye Industries,* 374 F. Supp. 1350, 1354 (S.D. Ga. 1974). Whether the officer could constitutionally use an OSHA inspection as a pretense to search for evidence of violent crime, tax fraud, or manufacture of contraband, for instance, is not before the Court in this case.

ing safe and healthful working environments in OSHA itself:

> "(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.
>
> "(b) The Congress declares it to be its purpose and policy . . . to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources— . . ." 29 U.S.C. § 651.

This Court has recently had occasion to refer to this urgent federal interest by noting that "After extensive investigation, Congress concluded, in 1970, that work-related deaths and injuries had become a 'drastic' national problem." *Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Commission,* ..... U.S. ....., ..., 97 S.Ct. 1261, 1263 (1977). What Congress hoped to remedy in enacting OSHA is grimly summed up in the Senate Report, quoted by the Court in *Atlas Roofing* as follows:

> "The problem of assuring safe and healthful workplaces for our working men and women ranks in importance with any that engages the national attention today. . . . 14,500 persons are killed annually as a result of industrial accidents; accordingly, during the past four years more Americans have been killed where they work than in the Vietnam war. By the lowest count, 2.2 million persons are disabled on the job each year, resulting in the loss of 250 million man days of work—many times more than are lost through strikes. In addition to the individual human tragedies involved, the economic impact of industrial deaths and disability is staggering. Over $1.5 billion is wasted in lost wages,

> and the annual loss to the Gross National Product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation benefits and medical expenses. This 'grim current scene' . . . represents a worsening trend, for the fact is that the number of disabling injuries per million man hours worked is today 20% higher than in 1958." S.Rep.No. 91—1282, 91st Cong., 2d Sess., 2 (1970); Leg.Hist. 142 U.S. Code Cong. & Admin.News 1970, pp. 5177, 5178. See also H.R.Rep.No.91—1291, 91st Cong., 2d Sess., 14-15 (1970); Leg.Hist. 844-845 ("The issue of the health and safety of the American working man and woman is the most crucial one in the whole environmental question . . . the worst problem confronting American workers").

Id. at 97 S.Ct. 1263, n. 1.

In *Atlas Roofing,* the Court unanimously (Justice Blackmun not participating) upheld the civil penalty fact-finding provisions of OSHA as against a claim that they contravened the Seventh Amendment's right to jury trials in "suits at common law." The Court made but passing reference to Sec. 8(a) in describing the statutory scheme. *Id.* at 97 S.Ct. 1264.

To understand the practical problems involved in the regulation of conditions affecting workers' health and safety, it is necessary to look in some detail at the nature of the hazards regulated by OSHA. Many of these hazards cannot readily be discovered by non-technical workers. It has been estimated that more than seven million workers are exposed to toxic substances regulated by OSHA. These substances are often contained in products sold under trade names; it is thus impossible for the workers to be aware

of the ingredients.[7] Hundreds of chemicals are regulated by OSHA, many considered hazardous at concentrations as low as 0.025 parts per million. See 29 C.F.R. § 1910.1000 *et seq.* Many of these chemicals are "stable, persistent and insidious, with harmful health effects surfacing after long periods of latency."[8] Under such circumstances it cannot be expected that without the aid of technically competent inspectors any but the most blatant, visible violations of regulations will be discovered by the potential victims thereof.

Were OSHA to depend solely upon worker complaints or upon probable cause to justify inspections, the serious hazards which modern chemistry has released into the workplaces of the nation would too often go undetected until disastrous consequences were felt.[9] A general requirement of probable cause or dependence upon employee complaints would leave vast areas of legitimate concern virtually barred to OSHA inspectors, because modern occupational hazards can be subtle and insidious. In order to effectuate the purposes of the Act, therefore, the Occupational Safety and Health Administration must be allowed to rely on "unannounced, even frequent" warrantless inspections and spot-checks, *Biswell, supra,* at 406 U.S. 316, as sanctioned by the Congress in Sec. 8(a).

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7. John Finkles, Director of the National Institute for Occupational Safety and Health, in the *Wall Street Journal*, April 28, 1977, at 77.

8. Olpin, "Policing Toxic Chemicals," 1976 Utah L. Rev. 85, 87.

9. The difficulty of discovering the dangers of any given new substance has been recognized by Congress in the area of drugs for many years, see Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, 355, and more recently in the area of toxic substances. Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*

II. A Holding by This Court That Sec. 8(a) of OSHA Is Unconstitutional Would Have a Devastating Effect on the Federal Government's Pollution Control and Public Health Protection Efforts in Many Other Areas.

In the relatively few years of heightened national environmental consciousness since the President signed into law the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, on January 1, 1970, the Congress has enacted an imposing array of comprehensive statutes designed to protect the public health and welfare from further industrial pollution of the human environment. These include the Clean Air Act of 1970, 42 U.S.C. § 1857 *et seq.;* the Federal Water Pollution Control Act of 1972, 33 U.S.C. § 1251 *et seq.;* the Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. § 136 *et seq.;* the Safe Drinking Water Act of 1974, 42 U.S.C. § 300f *et seq.;* the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6902 *et seq.;* and the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 *et seq.* See also the earlier Federal Hazardous Substances Act of 1960, 15 U.S.C. § 1261 *et seq.*

Each one of these statutes provides for warrantless administrative inspections of the particular industry or industries regulated thereby as a central mechanism of ensuring achievement of the statutory goals. The pertinent sections of each Act are set out in full in Appendix II. These provisions in each case are substantially similar to those contained in Sec. 8(a) of OSHA. See, *e.g.*, Clean Air Act, 42 U.S.C. §§ 1857c-9; 1857f-5; Federal Water Pollution Control Act, 33 U.S.C. § 1318; Toxic Substances Control Act, 15 U.S.C. § 2610. Most of these statutes also typically begin, as do OSHA and the Federal Gun Control Act at issue in *Biswell,* with a Congressional declaration

expressing the urgent federal interest sought to be achieved by the statute in general, and by implication the warrantless inspection provisions in particular. *E.g.*, Clean Air Act, 42 U.S.C. § 1857; Federal Water Pollution Control Act, 33 U.S.C. § 1251; Toxic Substances Control Act, 15 U.S.C. § 2601.

Of course none of these statutes is before this Court in this case, and *Amici* do not propose to engage in any further individual analysis thereof. The point we wish to urge on the Court is simply that if the Court upholds the district court's sweeping decision in this case, it would be difficult to see how such a ruling would not severely weaken an enormous number of critically important federal statutes in the environmental and public health field.

Nor do we mean to suggest that warrants should never be required for administrative inspections under environmental and public health protection statutes: we urge, rather, that whether the Fourth Amendment requires a warrant in this particular "class of cases" will turn upon a case-by-case factual analysis balancing the factors articulated in *United States v. Biswell, supra*, and discussed above.

CONCLUSION

The judgment of the district court declaring Sec. 8(a) of the Occupational Safety and Health Act to be unconstitutional should be reversed.

Respectfully submitted,

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Appendix I

Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*

29 U.S.C. § 657(a):

(a) In order to carry out the purposes of this chapter, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

Appendix II

Clean Air Act of 1970, 42 U.S.C. § 1857 et seq.

42 U.S.C. § 1857c-9(a):

"For the purpose . . . of determining whether any person is in violation of any such standard or any requirement of such a plan,

. . .

"(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1)."

42 U.S.C. § 1857f-5(c):

"For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness."

Federal Water Pollution Control Act of 1972, 33 U.S.C. § 1251 et seq.

33 U.S.C. § 1318(a):

"Whenever required to carry out the objective of this chapter, including but not limited to . . . determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance . . .

. . .

"(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause."

Federal Safe Drinking Water Act of 1974, 42 U.S.C. § 300f et. seq.

42 U.S.C. § 300j-4(b)(1):

"Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to a national primary drinking water regulation prescribed under section 300g—1 of this title or applicable underground injection control program (or person in charge of any of the property of such supplier or other person), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine

whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source."

Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. § 136 et seq.

7 U.S.C. § 136g(a):

"For purposes of enforcing the provisions of this subchapter, officers or employees duly designated by the Administrator are authorized to enter at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge."

Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

42 U.S.C. § 6927(a):

"For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer employee of a State having an authorized hazardous waste program, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, such officers or employees are authorized—

(1) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, or disposed of;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling of such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge."

Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 *et seq.*

15 U.S.C. § 2610:

"For purposes of administering this chapter, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) Scope.—(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) of this section shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances or mixtures within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) of this section shall extend to—

(A) financial data,

(B) sales data (other than shipment data),

(C) pricing data,

(D) personnel data, or

(E) research data (other than data required by this chapter or under a rule promulgated thereunder),

unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) of this section for such inspection.

Federal Hazardous Substances Act of 1960, 15 U.S.C. § 1261 *et seq.*

15 U.S.C. § 1270:

"(a) The Secretary is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the Department or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department.

(b) For purposes of enforcement of this chapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge."